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MAILED

MAY 10 2010

OFFICE OF PETITIONS

In re Patent of Fagan et al.	:	DECISION ON REQUEST
Patent No. 7,605,129	:	FOR
Issue Date: October 20, 2009	:	RECONSIDERATION OF
Application No. 10/539,962	:	PATENT TERM ADJUSTMENT
Filed: November 13, 2006	:	AND
Attorney Docket No. C.R.106	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed December 18, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by at least one hundred ninety-eight (198) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by at least one thousand one hundred ninety-eight (198) days is **GRANTED to the extent indicated herein.**

In an international application, the B period of delay is based on the failure of the Office to issue a patent within three years after the national stage commences under 35 U.S.C. 371(b) or (f). See 1.702(b). Contrary to patentees' assertion, the actual filing date of the application is not a consideration when determining the B period of delay. The national stage commenced in this application on June 20, 2005. Thus, maximum B period delay is 487 days, which is the number of days beginning on June 21, 2008, the day after the date three years after the date of commencement, and ending on October 20, 2009, the date the patent issued. See 1.703(b). The B period of delay is 322

days, which is 487 days minus the 165 days of overlapping delay between the A period of delay and the B period of delay.


Patentees assert entitlement to 198 days of total patent term adjustment based upon the following formula: 487 of B delay minus 165 days of A delay minus 124 days of Applicant delay (petition page 3). Patentees are informed that patentees are entitled to 165 days of A delay plus 487 days of B delay minus 165 days of overlapping delay minus 124 days of Applicant delay for a total of 363 days of patent term adjustment.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

The Office acknowledges receipt of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three hundred sixty-three (363) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

  
Shirene Willis Brantley  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,605,129 B2

DATED : October 20, 2009

**DRAFT**

INVENTOR(S) : Fagan et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 41 days

Delete the phrase "by 41 days" and insert – by 363 days--